

Nuclear Regulatory Commission

§ 72.46

(g) A license issued to DOE under this part for an MRS authorized by section 142(b) of NWPA (101 Stat. 1330-232, 42 U.S.C. 10162(b)) must include the following conditions:

(1) Construction of the MRS may not begin until the Commission has authorized the construction of a repository under section 114(d) of NWPA (96 Stat. 2215, as amended by 101 Stat. 1330-230, 42 U.S.C. 10134 (d)) and part 60 or 63 of this chapter;

(2) Construction of the MRS or acceptance of spent nuclear fuel, high-level radioactive waste, and/or reactor-related GTCC waste at the MRS is prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases.

(3) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 10,000 metric tons of heavy metal until a repository authorized under NWPA and part 60 or 63 of this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 15,000 metric tons of heavy metal.

[53 FR 31658, Aug. 19, 1988, as amended at 64 FR 33183, June 22, 1999; 66 FR 51840, Oct. 11, 2001; 66 FR 55815, Nov. 2, 2001; 67 FR 3586, Jan. 25, 2002; 68 FR 58819, Oct. 10, 2003]

§ 72.46 Public hearings.

(a) In connection with each application for a license under this part, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(b)(1) In connection with each application for an amendment to a license under this part, the Commission shall, except as provided in paragraph (b)(2) of this section, issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission

finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(2) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee may dispense with a notice of proposed action and opportunity for hearing or a notice of hearing and take immediate action on an amendment to a license issued under this part upon a determination that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. After taking the action, the Director or the Director's designee shall promptly publish a notice in the FEDERAL REGISTER of the action taken and of the right of interested persons to request a hearing on whether the action should be rescinded or modified. If the action taken amends an MRS license, the Director or the Director's designee shall also inform the appropriate State and local officials.

(c) The notice of proposed action and opportunity for hearing or the notice of hearing may be included in the notice of docketing required to be published by § 72.16 of this part.

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the FEDERAL REGISTER of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an ISFSI located at a site other than a reactor site or an MRS until expressly authorized to do so by the Commission.

(e) If an application for (or an amendment to) a specific license issued under this part incorporates by reference information on the design of a spent fuel storage cask for which NRC approval pursuant to subpart L of this part has been issued or is being sought, the

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scope of any public hearing held to consider the application will not include any cask design issues.

[53 FR 31658, Aug. 19, 1988, as amended at 60 FR 20886, Apr. 28, 1995; 65 FR 50617, Aug. 21, 2000]

§ 72.48 Changes, tests, and experiments.

(a) Definitions for the purposes of this section:

(1) *Change* means a modification or addition to, or removal from, the facility or spent fuel storage cask design or procedures that affects a design function, method of performing or controlling the function, or an evaluation that demonstrates that intended functions will be accomplished.

(2) *Departure from a method of evaluation described in the FSAR (as updated) used in establishing the design bases or in the safety analyses* means:

(i) Changing any of the elements of the method described in the FSAR (as updated) unless the results of the analyses are conservative or essentially the same; or

(ii) Changing from a method described in the FSAR to another method unless that method has been approved by NRC for the intended application.

(3) *Facility* means either an independent spent fuel storage installation (ISFSI) or a Monitored Retrievable Storage facility (MRS).

(4) *The facility or spent fuel storage cask design as described in the Final Safety Analysis Report (FSAR) (as updated)* means:

(i) The structures, systems, and components (SSC) that are described in the FSAR (as updated),

(ii) The design and performance requirements for such SSCs described in the FSAR (as updated), and

(iii) The evaluations or methods of evaluation included in the FSAR (as updated) for such SSCs which demonstrate that their intended function(s) will be accomplished.

(5) *Final Safety Analysis Report (as updated)* means:

(i) For specific licensees, the Safety Analysis Report for a facility submitted and updated in accordance with § 72.70;

(ii) For general licensees, the Safety Analysis Report for a spent fuel stor-

age cask design, as amended and supplemented; and

(iii) For certificate holders, the Safety Analysis Report for a spent fuel storage cask design submitted and updated in accordance with § 72.248.

(6) *Procedures as described in the Final Safety Analysis Report (as updated)* means those procedures that contain information described in the FSAR (as updated) such as how SSCs are operated and controlled (including assumed operator actions and response times).

(7) *Tests or experiments not described in the Final Safety Analysis Report (as updated)* means any activity where any SSC is utilized or controlled in a manner which is either:

(i) Outside the reference bounds of the design bases as described in the FSAR (as updated) or

(ii) Inconsistent with the analyses or descriptions in the FSAR (as updated).

(b) This section applies to:

(1) Each holder of a general or specific license issued under this part, and

(2) Each holder of a Certificate of Compliance (CoC) issued under this part.

(c)(1) A licensee or certificate holder may make changes in the facility or spent fuel storage cask design as described in the FSAR (as updated), make changes in the procedures as described in the FSAR (as updated), and conduct tests or experiments not described in the FSAR (as updated), without obtaining either:

(i) A license amendment pursuant to § 72.56 (for specific licensees) or

(ii) A CoC amendment submitted by the certificate holder pursuant to § 72.244 (for general licensees and certificate holders) if:

(A) A change to the technical specifications incorporated in the specific license is not required; or

(B) A change in the terms, conditions, or specifications incorporated in the CoC is not required; and

(C) The change, test, or experiment does not meet any of the criteria in paragraph (c)(2) of this section.

(2) A specific licensee shall obtain a license amendment pursuant to § 72.56, a certificate holder shall obtain a CoC amendment pursuant to § 72.244, and a general licensee shall request that the